

# WAIVER OF MEDICARE AND MEDICAID NURSING FACILITY PROHIBITION

MARCH 18, 1997.—Committed to the Committee of the Whole House on the State of the Union and ordered to be printed

Mr. BILEY, from the Committee on Commerce,  
submitted the following

## REPORT



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7500 Security Blvd.  
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[To accompany H.R. 968]

[Including cost estimate of the Congressional Budget Office]

The Committee on Commerce, to whom was referred the bill (H.R. 968) to amend title XVIII and XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities, having considered the same, report favorably thereon with amendments and recommend that the bill as amended do pass.

## CONTENTS

	Page
Amendment .....	2
Purpose and Summary .....	2
Background and Need for Legislation .....	2
Hearings .....	2
Committee Consideration .....	2
Rollcall Votes .....	3
Committee Oversight Findings .....	3
Committee on Government Reform and Oversight .....	3
New Budget Authority and Tax Expenditures .....	3
Committee Cost Estimate .....	3
Congressional Budget Office Estimate .....	3
Federal Mandates Statement .....	4
Advisory Committee Statement .....	4
Constitutional Authority Statement .....	4
Applicability to Legislative Branch .....	5
Section-by-Section Analysis of the Legislation .....	5
Changes in Existing Law Made by the Bill, as Reported .....	5

## AMENDMENT

The amendments (stated in terms of the page and line numbers of the introduced bill) are as follows:

Page 2, line 12, strike "(iii)" and insert "(iii)(I)".

Page 2, line 14, insert "(or skilled nursing facility for purposes of title XVIII)" after "nursing facility".

## PURPOSE AND SUMMARY

H.R. 968 amends Title XVIII and Title XIX of the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain facilities. This measure permits a State to waive the current prohibition if the State: (1) determines that there is no other such program offered within a reasonable distance of the facility; (2) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility; and (3) provides notice of such determination to the State long-term care ombudsman.

## BACKGROUND AND NEED FOR LEGISLATION

Under existing Federal law, a nursing facility may lose its ability to offer facility-based nurse aide training and competency evaluation programs for reasons that are unrelated to the quality of the program itself. This unintended consequence of current law arises from instances where some form of operational deficiency may exist, even though such deficiency is unrelated to the nurse aide training and evaluation programs and is being or has been corrected. As a result, nursing facilities, particularly those in rural communities, are prevented from conducting the training and evaluation that is integral to the provision of quality nursing care and the prevention of a staffing void.

This measure would revise current law to permit the continuation of nurse aide training and competency evaluation programs in affected facilities under certain circumstances. In order for a facility to continue its training and evaluation programs, the State in which it is located would have to make a determination that no similar program is in existence within a reasonable distance of the facility, conduct oversight activities to ensure that an adequate environment exists for operating the program in the facility, and provide notice of such determination to the State long-term care ombudsman. The Committee and the Administration agree that these training programs should continue under certain circumstances.

## HEARINGS

The Committee on Commerce has not held hearings on the legislation.

## COMMITTEE CONSIDERATION

On March 12, 1997, the Subcommittee on Health and Environment met in open markup session and, by unanimous consent, a quorum being present, approved H.R. 968 for Full Committee consideration, without amendment.

On March 13, 1997, the Full Committee met in open markup session and ordered H.R. 968 reported to the House, without amendment, by a voice vote.

#### ROLLCALL VOTES

Clause 2(1)(2)(B) of rule XI of the Rules of the House requires the Committee to list the recorded votes on the motion to report legislation and on amendments thereto. There were no recorded votes taken in connection with ordering H.R. 968 reported. A motion by Mr. Bliley to order H.R. 968 reported to the House, without amendment, was agreed to by a voice vote, a quorum being present.

#### COMMITTEE OVERSIGHT FINDINGS

Pursuant to clause 2(1)(3)(A) of rule XI of the Rules of the House of Representatives, the Committee has not held oversight or legislative hearings on this legislation.

#### COMMITTEE ON GOVERNMENT REFORM AND OVERSIGHT

Pursuant to clause 2(1)(3)(D) of rule XI of the Rules of the House of Representatives, no oversight findings have been submitted to the Committee by the Committee on Government Reform and Oversight.

#### NEW BUDGET AUTHORITY AND TAX EXPENDITURES

In compliance with clause 2(1)(3)(B) of rule XI of the Rules of the House of Representatives, the Committee finds that H.R. 968, a bill to amend the Social Security Act to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain facilities, would result in no new or increased budget authority or tax expenditures or revenues.

#### COMMITTEE COST ESTIMATE

The Committee adopts as its own the cost estimate prepared by the Director of the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974.

#### CONGRESSIONAL BUDGET OFFICE ESTIMATE

Pursuant to clause 2(1)(3)(C) of rule XI of the Rules of the House of Representatives, the following is the cost estimate provided by the Congressional Budget Office pursuant to section 403 of the Congressional Budget Act of 1974:

U.S. CONGRESS,  
CONGRESSIONAL BUDGET OFFICE,  
*Washington, DC, March 14, 1997.*

Hon. TOM BILEY,  
*Chairman, Committee on Commerce,  
House of Representatives, Washington, DC*

DEAR MR. CHAIRMAN: The Congressional Budget Office has prepared the enclosed cost estimate for H.R. 968, a bill to permit a



waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities.

If you wish for further details on this estimate, we will be pleased to provide them. The CBO staff contact is Robin Rudowitz.

Sincerely,

JUNE E. O'NEILL, *Director.*

Enclosure.

*H.R. 968—A bill to permit a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain nursing facilities*

CBO estimates that enactment of this bill would have no budgetary impact.

Nursing facilities must meet certain requirements to be certified for payment by the Medicare and Medicaid programs. Among these are provisions included in the Omnibus Budget Reconciliation Act of 1987 that require nursing facilities to conduct nurse aide training and competency evaluation programs. However, the Secretary can approve such programs at nursing facilities only under certain conditions. In rural areas where there are no nearby training programs, the bill would allow the Secretary to waive some of the restrictions so that a training program could be conducted at a nursing facility as long as the program was not conducted by the nursing facility.

This bill contains no intergovernmental or private-sector mandates as defined in the Unfunded Mandates Reform Act of 1995 (UMRA) and would impose no costs on state, local, or tribal governments.

The CBO staff contact for the estimate is Robin Rudowitz. This estimate was approved by Paul N. Van de Water, Assistant Director for Budget Analysis.

#### *Previous CBO estimate*

An essentially similar version of H.R. 968 was ordered reported by the Committee on Ways and Means on March 12, 1997. CBO estimated that enactment of the bill would have no budgetary impact.

#### FEDERAL MANDATES STATEMENT

The Committee adopts as its own the estimate of Federal mandates prepared by the Director of the Congressional Budget Office pursuant to section 423 of the Unfunded Mandates Reform Act.

#### ADVISORY COMMITTEE STATEMENT

No advisory committees within the meaning of section 5(b) of the Federal Advisory Committee Act were created by this legislation.

#### CONSTITUTIONAL AUTHORITY STATEMENT

Pursuant to clause 2(1)(4) of rule XI of the Rules of the House of Representatives, the Committee finds that the Constitutional authority for this legislation is provided in Article I, section 8, clause 3, which grants Congress the power to regulate commerce with foreign nations, among the several States, and with the Indian tribes.

## APPLICABILITY TO LEGISLATIVE BRANCH

The Committee finds that the legislation does not relate to the terms and conditions of employment or access to public services or accommodations within the meaning of section 102(b)(3) of the Congressional Accountability Act.

### SECTION-BY-SECTION ANALYSIS OF THE LEGISLATION

#### SECTION 1. PERMITTING WAIVER OF PROHIBITION OF OFFERING NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS IN CERTAIN FACILITIES

Section 1 of the bill amends section 1819(f)(2) and section 1919(f)(2) of the Social Security Act to authorize a waiver of the prohibition of offering nurse aide training and competency evaluation programs in certain facilities upon a State determination that no similar program is in existence within a reasonable distance of the facility, an adequate environment exists for operating the program in the facility, and the State long-term care ombudsman has been notified of the above.

#### CHANGES IN EXISTING LAW MADE BY THE BILL, AS REPORTED

In compliance with clause 3 of rule XIII of the Rules of the House of Representatives, changes in existing law made by the bill, as reported, are shown as follows (new matter is printed in italic and existing law in which no change is proposed is shown in roman):

### THE SOCIAL SECURITY ACT

\* \* \* \* \*

#### TITLE XVIII—HEALTH INSURANCE FOR THE AGED AND DISABLED

\* \* \* \* \*

#### REQUIREMENTS FOR, AND ASSURING QUALITY OF CARE IN, SKILLED NURSING FACILITIES

##### SEC. 1819. (a) \* \* \*

\* \* \* \* \*

#### (f) RESPONSIBILITIES OF SECRETARY RELATING TO SKILLED NURSING FACILITY REQUIREMENTS.—

(1) GENERAL RESPONSIBILITY.—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in skilled nursing facilities under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.—

(A) \* \* \*

(B) Approval of certain programs.—Such requirements—

(i) \* \* \*

\* \* \* \* \*

(iii) *subject to subparagraph (C)*, shall prohibit approval of such a program—

(I) \* \* \*

\* \* \* \* \*

(C) *WAIVER AUTHORIZED.*—*Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a nursing facility (or skilled nursing facility for purposes of title XVIII) in a State if the State—*

*(i) determines that there is no other such program offered within a reasonable distance of the facility,*

*(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and*

*(iii) provides notice of such determination and assurances to the State long-term care ombudsman.*

\* \* \* \* \*

## TITLE XIX—GRANTS TO STATES FOR MEDICAL ASSISTANCE PROGRAMS

\* \* \* \* \*

### REQUIREMENTS FOR NURSING FACILITIES

#### SEC. 1919. (a) \* \* \*

\* \* \* \* \*

(f) *RESPONSIBILITIES OF SECRETARY RELATING TO NURSING FACILITY REQUIREMENTS.*—

(1) *GENERAL RESPONSIBILITY.*—It is the duty and responsibility of the Secretary to assure that requirements which govern the provision of care in nursing facilities under State plans approved under this title, and the enforcement of such requirements, are adequate to protect the health, safety, welfare, and rights of residents and to promote the effective and efficient use of public moneys.

(2) *REQUIREMENTS FOR NURSE AIDE TRAINING AND COMPETENCY EVALUATION PROGRAMS AND FOR NURSE AIDE COMPETENCY EVALUATION PROGRAMS.*—

(A) \* \* \*

(B) *APPROVAL OF CERTAIN PROGRAMS.*—Such requirements—

(i) \* \* \*

\* \* \* \* \*

(iii) *subject to subparagraph (C)*, shall prohibit approval of such a program—

(I) \* \* \*

\* \* \* \* \*

(C) *WAIVER AUTHORIZED.*—*Clause (iii)(I) of subparagraph (B) shall not apply to a program offered in (but not by) a*

*nursing facility (or skilled nursing facility for purposes of title XVIII) in a State if the State—*

*(i) determines that there is no other such program offered within a reasonable distance of the facility,*

*(ii) assures, through an oversight effort, that an adequate environment exists for operating the program in the facility, and*

*(iii) provides notice of such determination and assurances to the State long-term care ombudsman.*

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